



**CONSTITUTION OF
IS INDUSTRY FUND PTY LTD ABN 45 010 814 623**

Date adopted by Shareholders: 25th October 2019

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A COMPANY LIMITED BY SHARES

CONSTITUTION

OF

IS INDUSTRY FUND PTY LTD

1. NAME OF COMPANY

The name of the Company is IS Industry Fund Pty Ltd.

2. LIABILITY OF SHAREHOLDERS

The liability of Shareholders is limited.

3. PRELIMINARY

3.1 Replaceable Rules Not to Apply

The Replaceable Rules do not apply to the Company.

3.2 Definitions

In these Rules unless it is inconsistent with the subject or context in which it is used:

'Board' means the Directors of the Company acting as the Board of Directors.

'Business Day' means a day which is not a Saturday, Sunday or public holiday in Brisbane.

'Chairperson' means a Director appointed as Chairperson of the Board.

'Company' means IS Industry Fund Pty Ltd.

'Corporate Representative' means a natural person appointed by a Shareholder to exercise certain powers on its behalf.

'Corporations Act' means the *Corporations Act 2001* including any regulations made under the Corporations Act.

'Deed' means the Deed of Trust for the Fund as amended from time to time.

'Deputy Chairperson' means a Director appointed as Deputy Chairperson of the Board.

'Director' means a person who is a Director for the time being of the Company.

'Director Appointment Materials' means the Fund's Fit and Proper Policy and any other policy of the Fund which may be required for the appointment of a director.

'Employer' means a participating Employer in the Fund.

'Employer Shareholder' means the Queensland Hotels Association Union of Employers or its successor, assigns or nominee.

'Employer Representative' means a Director nominated by the Employer Shareholder and appointed by the Board.

'Event of Default' occurs in respect of a Shareholder if:

(a) it breaches a material provision of the Constitution and, where capable of rectification, the breach is not rectified within 15 Business Days of receipt of the notice requiring rectification served by the non-defaulting Shareholder;

(b) a petition for winding it up is presented and it cannot, within 10 Business Days, reasonably satisfy the other Shareholder that the petition is frivolous or vexatious or an order is made, or an effective resolution is passed, for its winding up, except where the winding up is for the purpose of solvent reconstruction or amalgamation (and has been approved by the other Shareholder, such approval not to be unreasonably withheld);

(c) it becomes Insolvent;

(d) the holder of an encumbrance takes possession of the Shareholder's Interest in the Company or takes any other step or does any other thing which results in the holder of the Encumbrance having the ability to control the interest of the Shareholder in the Company;

(e) it voluntarily winds up; or

(f) any other event occurs which, under the law of Australia or any other place, has an effect equivalent or analogous to any of the events referred to in this definition (subject to analogous grace periods and other protections as provided above).

'Fit and Proper' in relation to a person means that the person is eligible to be a Director, under the Fit and Proper policy adopted by the Board of Directors from time to time for the purposes of compliance with Relevant Law.

'Fund' means the Intrust Super Fund established for the purpose of providing retirement and other benefits pursuant to a Deed of Trust dated 1 June 1988.

'Member' means a Member of the Fund.

'Member Representative' means a Director nominated by the Member Shareholder and appointed by the Board.

'Member Shareholder' means United Voice (Queensland Branch) or its successor, assigns or nominee.

'Nominee' means a person nominated to become an Employer Representative or Member Representative.

'Relevant Law' means any requirements under the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations 1994, the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, Prudential Standards and any other present or future legislation which the trustee must comply with in order for the Fund:

(a) to qualify for concessional taxation treatment as a complying superannuation Fund; or

(b) to meet any other requirements of the Australian Prudential Regulation Authority, or such other regulator as the Fund is required to comply with; and includes any proposed requirements, rulings, announcements or obligations which the trustee believes will have an affect retrospectively.

'Replaceable Rules' means all or any of the Replaceable Rules contained in the Corporations Act from time to time and includes any Replaceable Rule that was or may become, a provision of the Corporations Act.

'Rules' means the Rules of this Constitution as altered or added to from time to time.

'Seal' means the Common Seal of the Company, if any, and includes any Certificate Seal of the Company.

'Secretary' means any person appointed to perform the duties of a Secretary of the Company.

'Shareholder' means a Shareholder of the Company.

'Writing' and 'Written' includes printing, typing, lithography and other modes of reproducing words in a visible form.

3.3 Interpretation

(a) An expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purpose of that Part or Division has, in any of these Rules that deals with a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as in that Part or Division.

(b) Words in the singular include the plural and vice versa.

(c) Words imputing a gender include each other gender.

(d) A reference to the Corporations Act or any other statute or regulations is to be read as though the words 'as modified or substituted from time to time' were added to the reference.

(e) The headings and side notes do not affect the construction of these Rules.

4. PROPRIETARY COMPANY

4.1 General

[compare section 113]

The Company is a proprietary Company and:

(a) the number of Shareholders of the Company is limited to 50;

(b) the Company shall not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Corporations Act, except for an offer of shares to existing Shareholders of the Company.

4.2 Shareholder

A Shareholder has the right:

(a) to receive notice of and to attend general meetings of the Company; and

(b) to vote in a poll at a general meeting of the Company, on the basis of one vote for each share held.

4.3 Directors Power to Issue Shares

[compare sections 254A and 254B]

The Directors may issue additional shares in the Company but:

- a) must only issue shares to the Employer Shareholder or the Member Shareholder and
- b) must also issue shares to the other Shareholder to ensure that, at all times, 50% of the total issued shares are held by the Employer Shareholder and 50 % of the total issued shares are held by the Member Shareholder.

4.4 Forms of Instrument of Transfer

- (a) Subject to these Rules, and in particular, rule 4.5, a Shareholder may transfer its shares by instrument in writing in any usual or common form or in any other form that the Directors approve.
- (b) An instrument of transfer referred to in rule 4.4(a) is to be executed by or on behalf of both the transferor and the transferee.

4.5 Transfer Procedure

[compare replaceable rule 1072F and section 1071B]

- (a) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the Register of Shareholders in respect of the shares.
- (b) A Shareholder may transfer its shares to its successor, assigns or nominee.
- (c) If a Shareholder ceases to exist, that Shareholder must transfer its shares to its successor, assigns or nominee.
- (d) Any Director is the attorney of a Shareholder for the purposes of executing a transfer of shares for the purposes of rule 4.5(c).
- (e) The instrument of transfer must be left for registration at the registered office of the Company or such other place nominated by the Directors, with such other information as the Directors properly require to show the right of the transferor to make the transfer, and thereupon the Company must, subject to the powers vested in the Directors by these Rules, register the transferee as a Shareholder.
- (f) If an Event of Default occurs, the defaulting Shareholder must, if the default is not remedied within a reasonable period as set out in the notice not being less than 10 Business Days, transfer its shares to its successor, assigns or nominee.

4.6 No variation of Rights

The rights conferred upon the holders of the ordinary shares are deemed not to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

4.7 Corporate Representative

[compare section 250D]

As a Body Corporate, each Shareholder must appoint a natural person as its Representative to exercise on its behalf any or all of the powers that the Shareholder may exercise:

- a) at meetings of the Company; or
- b) relating to resolutions to be passed without meetings.

The appointment of a Corporate Representative shall be a standing one and must be in writing and be signed by the Shareholder appointing the Representative and state:

- a) the Shareholder's name and address;
- b) the Company's name;
- c) the Representative's name and address;
- d) any restriction on the Representative to exercise any power of the Shareholder

An instrument appointing a Corporate Representative must be received by the Company at its registered office within 14 days following the date on which this rule becomes effective.

The appointment of a Corporate Representative may be revoked by the Shareholder that appointed the Corporate Representative by notice to the Company from the Shareholder stating that the appointment of the Corporate Representative is revoked or by appointing a new Corporate Representative.

A vote cast by a Corporate Representative will be valid unless before the start of a general meeting (or, in the case on an adjourned general meeting, before the resumption of the adjourned general meeting) at which a Corporate Representative votes:

- a) the Shareholder that appointed the Corporate Representative ceases to be a Shareholder; or
- b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the Corporate Representative; or
 - (ii) the appointment of a new Corporate Representative.

The Company is not responsible for ensuring that the terms of appointment of a Corporate Representative are complied with, and accordingly is not liable if those terms are not complied with.

4.8 Variation to Constitution

[compare section 136(2)]

Subject to these Rules, a special resolution of Shareholders altering, adding to or omitting a provision contained in the Constitution of the Company does not have any effect unless and until the consents of a majority of Employer Representatives and a majority of Member Representatives have been obtained.

If the Board does not comply with the basic equal representation requirements, then subject to the Relevant Law a special resolution pursuant to this rule 4.8 requires the consent of a majority of the Board.

5. GENERAL MEETINGS OF THE COMPANY

5.1 General Meeting

[compare replaceable rule 249C and section 249D]

- (a) Any Director may call a general meeting;
- (b) Except as permitted by the Corporations Act, a Shareholder may not call a general meeting.

5.2 Notice

[compare section 249H]

- (a) A notice of a general meeting is to specify the place, the day and the hour of meeting and the general nature of the business to be transacted at the meeting as well as any other matters required to be specified at law;
- (b) If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Corporations Act in relation to the use of such technology.

5.3 Quorum

[compare replaceable rule 249T]

- (a) No business may be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business.
- (b) A quorum is 2 Shareholders.
- (c) For the purpose of determining whether a quorum is present, a Corporate Representative is deemed to be a Shareholder.

5.4 Failure to Achieve Quorum

[compare replaceable rule 249T]

If a quorum is not present within half an hour from the time appointed for the meeting, the meeting will be dissolved.

5.5 Chairperson

[compare replaceable rule 248E]

- (a) The Chairperson is to preside as chairperson at every general meeting.
- (b) Where a general meeting is held and:
 - (i) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,
 - (ii) the Deputy Chairperson will act as chair or if is unwilling to act,the Directors present must elect one of their number to be chairperson of the meeting;
- (c) where the Directors present fail to elect one of their number as chairperson of the meeting as provided by rule 5.5(b) or such chairperson is unwilling or unable to act then the Shareholders present may elect one of their number to be chairperson of the meeting.

5.6 Adjournment

[replaceable rule 249M]

The chairperson may with the consent of any meeting at which a quorum is present, and must, if so directed by the Shareholders present who may cast a majority of votes able to be cast at the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

5.7 Voting

[compare section 251A and replaceable rule 250J]

- (a) At any general meeting a resolution put to the vote of the meeting is decided on a show of hands unless, before a vote on a show of hands is taken, a poll is demanded by:
 - (i) the chairperson; or
 - (ii) at least 2 Corporate Representatives present entitled to vote on the resolution.
- (b) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceeding of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (c) The demand for a poll may be withdrawn.

5.8 Poll

[compare sections 250K to 250L and replaceable rule 250M]

(a) If a poll is duly demanded, it is to be taken in such manner and (subject to rule 5.8(b)) either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(b) A poll demanded on the election of a chairperson or on a question of adjournment is to be taken immediately.

5.9 Equality of Votes

[compare replaceable rule 250E]

In the case of equality of votes, the chairperson of the meeting at which a show of hands takes place or at which a poll is demanded, has no casting vote in addition to a deliberative vote (if any).

5.10 Entitlement to Vote

(a) at meetings of Shareholders each Corporate Representative present may vote; and

(b) on a show of hands each Corporate Representative has one vote;

(c) on a poll each Corporate Representative has one vote for each share held by the appointing Shareholder.

5.11 Shareholder Resolutions in Documents

[compare section 259A]

(a) Shareholders may pass a resolution without a general meeting being held if the Shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) For the purposes of rule 5.11(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Shareholders shall together be deemed to constitute one document containing a statement in those terms signed by those Shareholders on the respective days on which they signed the separate documents.

(c) In this rule 5.11, a reference to a document shall include a reference to an email scan copy of a document.

6. DIRECTORS

6.1 Appointment to Office

[compare section 201A]

- (a) There shall be an equal number of:
 - (i) Directors nominated by the Employer Shareholder ('Employer Representatives'); and
 - (ii) Directors nominated by the Member Shareholder ('Member Representatives').
- (b) Subject to rule 6.1(a), the Board shall determine the number of Directors.
- (c) Directors will be appointed for a term of up to four (4) years and may be re-appointed in accordance with this rule and rule 6.2 up to a maximum of three (3) consecutive terms.
- (d) The Board can resolve to extend the tenure of a Director beyond twelve (12) years for a period of up to two (2) more terms where the Board determines that the interests of the Members will be best served by retaining the skills, experience and expertise of the Director and where such extension would better manage the process of board renewal and transition.

6.2 Employer Representatives and Member Representatives

[compare section 201A]

- (a) The Directors must appoint the Nominee as a Director provided that:
 - (i) prior to the nomination being made an authorised representative of the relevant Shareholder and the Chairperson informally meet face to face or via telephone or other electronic means of audio or audio-visual communication to discuss the proposed nomination and suitability of the proposed Nominee having regard to the Fund's Director Appointment Materials;
 - (ii) the Shareholder subsequently makes a formal nomination by notice in writing to the Board accompanied by such documentation and information as may reasonably be required under the Fund's Director Appointment Materials;
 - (iii) the Shareholder or the Nominee, as the case may be, promptly provides the Board with any additional information required by the Board in order to ensure the Board has all the relevant information required under the Fund's Director Appointment Materials;
 - (iv) at the meeting held to consider the nomination, the Board is satisfied on the basis of the information before it that the Nominee meets the requirements under the Fund's Director Appointment Materials;
- (b) Any vacancy arising by reason of the expiry of the term of office of an Employer Representative or otherwise must be filled within 90 days by the nomination of a Director nominated for the purpose by the Employer Shareholder, and every Director so nominated and appointed by the Board shall be an Employer Representative.
- (c) Any vacancy arising by reason of the expiry of the term of office of a Member Representative or otherwise must be filled within 90 days by the nomination of a Member

nominated for the purpose by the Member Shareholder, and every Director so nominated and appointed by the Board shall be a Member Representative.

(d) Where a vacancy arises during the term of office of a Director the term of office of the Director appointed to fill the vacancy is the remainder of the term of office that had become vacant.

(e) If the Member Shareholder or the Employer Shareholder fails to make a nomination to fill a vacancy within the time prescribed by rule 6.2, the Board may make such appointment to fill the vacancy in such manner as to ensure that the Fund continues to satisfy the equal representation rules contained in the Relevant Law. In the event the Board appoints a new Employer Representative or Member Representative, due to a vacancy not being filled by a Shareholder, the appointment of the new Director must be passed by a resolution of the Board.

6.3 Removal from Office

[compare replaceable rule 203C]

(a) The Board must remove any Employer Representative or any Member Representative in any of the following circumstances:

(i) if the number of shares held by the Employer Shareholder is reduced in which case an Employer Representative can be removed, subject to rule 6.1(a);

(ii) if the number of shares held by the Member Shareholder is reduced in which case a Member Representative can be removed, subject to rule 6.1(a);

(iii) if the Employer Shareholder asks the Board that an Employer Representative be removed;

(iv) if the Member Shareholder asks the Board that a Member Representative be removed;

(v) if a Director fails to comply with the Fund's Director Appointment Materials.

6.4 Remuneration

[compare replaceable rules 202A(1)]

(a) A Director may be paid such remuneration as the Board determines from time to time. For the avoidance of doubt, the remuneration so determined may be nil.

(b) Remuneration is deemed to accrue from day to day.

(c) The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committees of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.

6.5 Vacation of Office

[compare replaceable rule 203A, section 203B and Part 2D.6, being sections 206A to 206H]

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the

Corporations Act, the office of a Director becomes vacant if:

- (a) the Director dies;
- (b) the Director is under a legal disability;
- (c) the Director resigns their office by notice in writing to the Company;
- (d) the removal of the Director is otherwise required by the Relevant Law;
- (e) the Director is removed under rule 6.3.

6.6 Manage Company

[compare replaceable rule 202A(2)]

Subject to the Corporations Act and to any other provision of these Rules, the business of the Company is to be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company and be reimbursed for all such expenses by the Company, and may exercise all such powers of the Company as are not, by the Corporations Act or by these Rules, required to be exercised by the Company in general meeting.

6.7 Appointment of Attorney

- (a) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors) for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of a person dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

6.8 Financial Authorisation

[compare replaceable rule 198B]

All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, are to be signed, drawn, accepted, endorsed or otherwise executed by any 2 Directors or in such other manner as the Directors determine.

6.9 Company to Act as Trustee

The Directors must ensure that the Company acts only as trustee of the Fund for the benefit of the Members of the Fund in compliance with the Deed and the Relevant Law.

6.10 Meetings of Directors

[compare sections 248A to 248G]

(a) The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

(b) When the offices of Chairperson or Deputy Chairperson fall vacant, the Directors shall appoint one of their number to fill each such vacancy.

(c) Each Director is entitled to notice of any meetings of the Directors of the Company.

Notice is deemed to have been given to a Director, and all Directors are hereby deemed to have consented to the method of giving notice, if notice is sent by mail, personally delivered, sent electronically to the usual place of residence or electronic address of the Director or at any other address given to the Secretary by the Director from time to time subject to the right of a Director to withdraw such consent within a reasonable period before a meeting.

(d) The Directors may meet either in person or by any technology consented to by all Directors subject to the right of a Director to withdraw such consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other technology is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting.

6.11 Quorum

[compare replaceable rule 248F]

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is two thirds of all the Directors of the Company, comprising at least one Employer Representative and at least one Member Representative.

6.12 Questions Decided by Majority

[compare replaceable rule 248G]

(a) Subject to these Rules and the Relevant Law, questions arising at a meeting of Directors will be decided by a majority of votes of Directors present and entitled to vote, which majority must comprise two thirds of all the Directors of the Company, and any such decision is for all purposes deemed to be a decision of the Directors.

(b) The chairperson of the meeting will not have a casting vote in addition to their deliberative vote.

6.13 Interests

[compare sections 191 and 192]

(a) Subject to satisfying the requirements of rule 6.13(b), neither the holding of office as a Director (nor the fact that a Director was a promoter of the Company) nor the fiduciary relationship resulting therefrom:

(i) disqualifies any Director from entering into any arrangement, contract or dealing with the Company or any Relevant Corporation or any other person in any capacity;

(ii) avoids or vitiates any arrangement, contract or dealing entered into by or on behalf of the Company or any Relevant Corporation or any other person in which a Director is in any way interested; or

(iii) renders any Director or any corporation of which a Director is an officer or member or in any way interested or any partnership of which a Director is a member or in any way interested liable to account for any profit arising out of the holding of any such office or place of profit or any such arrangement contract or dealing.

(b) The nature of a Director's interest is to be disclosed by that Director at the meeting of Directors at which the arrangement, contract or dealing is determined by the Directors, if the interest then exists, or, in any other case, at the meeting of Directors next following the acquisition of the interest.

(c) Subject to 6.13(d), a Director who is any way interested in any arrangement, contract or dealing as referred to in rule 6.13(a)(ii) (whether existing or proposed) may not vote in respect thereof at a meeting of the Directors and may not be counted in a quorum present at such meeting.

(d) Despite the fact that a Director who is any way interested in any arrangement, contract or dealing as referred to in rule 6.13(a)(ii) (whether existing or proposed), the Director may vote in respect thereof at a meeting of Directors and may be counted in a quorum present at such meeting if the Directors who are not interested in the arrangement, contract or dealing as referred to in rule 6.13(a)(ii) (whether existing or proposed) resolve that the Director may vote on those matters and may be counted in the quorum present at such meeting.

(e) A Director may affix or attest the affixation of the Seal to any instrument or sign or execute any document notwithstanding any interest which such Director has in the subject matter of that instrument or any other office or place of profit held by such Director.

(f) In this rule, 'Relevant Corporation' means any corporation in which the Company owns shares or is in any way interested or which owns shares in the Company or with which the Company has or may have dealings or any corporation which would be deemed under the Corporations Act and for the purposes of the Corporations Act to be related to the Company.

6.14 Remaining Directors may Act

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

6.15 Chairperson

[compare replaceable rule 248E]

- (a) The Chairperson will act as chairperson of meetings of Directors.
- (b) Where a meeting is held, and the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Deputy Chairperson will act as chairperson.

6.16 Committees

[compare section 198D]

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (b) A committee to which any powers have been so delegated may exercise the powers delegated in accordance with any directions of the Directors and a power so exercised is deemed to have been exercised by the Directors.
- (c) The Board will appoint a chairperson for any committee and determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

6.17 Resolution in Writing

[compare replaceable rule 248A]

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all of the Directors entitled to vote on the resolution is as valid and effective as if it had been passed at a meeting of the Board duly called and constituted, and may consist of several documents in the same form each signed by one or more of the Directors.
- (b) Subject to any policy of the Board, a document produced by mechanical or electronic means under the name of a Director with the Director's authority is deemed to be a document in writing signed by the Director.

6.18 Validity of Acts

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as, a Director, or that person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

7. ADMINISTRATIVE MATTERS

7.1 Secretary

[compare Part 2D.4 being sections 204A to 204G]

A Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

7.2 Company Seal is Optional

The Company may have a Seal.

7.3 If the Company Has a Seal

[compare sections 127(2) and 129(6)]

(a) If the Company has a Seal, then the Directors must provide for the safe custody of the Seal.

(b) The Seal is to be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal, and every document to which the Seal is affixed is to be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

7.4 Execution of Documents Without a Seal

[compare section 127(1) and 129(5)]

The Company may execute a document, including a Deed, by having the document signed by:

(a) 2 Directors; or

(b) a Director and the Company Secretary; and

(c) if the Company executes a Deed, the document is to be expressed to be executed as a Deed and be executed in accordance with the appropriate procedures set out in rule 7.3 or this rule.

7.5 Other Ways of Executing Documents

[compare section 127(3)]

Notwithstanding the provisions of Rules 7.3 and 7.4, any document including a Deed, may also be executed by the Company in any other manner permitted by law.

7.6 Inspection of Records

[compare replaceable rule 247D and sections 173,247A and 251B]

The Directors may determine whether and to what extent, and at what time and place and under what conditions, the accounting records and other documents of the Company or any of them are to be open to the inspection of Shareholders, and a Shareholder does not have the right to inspect any document of the Company except as provided by law or as authorised by the Directors.

7.7 Availability of Records for Inspection

[compare replaceable rule 247D and sections 173,247A and 251B]

The Directors must ensure that:

- (a) accounting records and other documents of the Company are open for inspection; and
- (b) information is supplied, as and when required
- (c) pursuant to the Relevant Law.

8. NO DISTRIBUTION TO SHAREHOLDERS

The Company is prohibited from distributing any of the Company's income to its Shareholders.

9. NOTICES

9.1 Service

[compare section 249J(3) and 249J(3A)]

(a) A notice may be given by the Company to any Shareholder either by sending it by post to the Shareholder's address as shown in the register of Shareholders or the address supplied by the Shareholder to the Company for the giving of notices or by sending it to the electronic address nominated by the Shareholder.

(b) Any notice served on a Shareholder by post is deemed to have been served 48 hours after posting. Any notice served on a Shareholder by electronic means is deemed to have been served when the transmission or electronic message is sent.

9.2 Persons Entitled to Notice

[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]

(a) Notice of every general meeting is to be given in the manner authorised by rule 9.1 to:

- (i) each Shareholder who is entitled to vote at general meetings of the Company;
- (ii) each Director; and
- (iii) the auditor of the Company (if any).

(b) No other person is entitled to receive notices of general meetings.

10. WINDING UP

If the Company is wound up the liquidator, if appointed, may, with the sanction or a special resolution of the Shareholders:

(a) Divide among the Shareholders in kind the whole or any part of the property of the Company and may for that purpose set such value as he or she considers fair upon any property to be so divided and may determine how the division is to be carried out as between the Shareholders.

(b) Vest the whole or any part of any such property in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities in respect of which there is any liability.

11. INDEMNITY AND INSURANCE

(compare sections 199A and 199B)

11.1 Indemnity in favour of Directors, Secretaries and Executive Officers

Subject to the Corporations Act and rule 11.2, the Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company, other than:

- (a) a Liability owed to the Company or a related body Corporate of the Company; or
- (b) a Liability owed to a person other than the Company that did not arise out of conduct in good faith, or which otherwise under the Corporations Act or Relevant Law the Company is not permitted to indemnify the Director for.

11.2 Indemnity for legal costs

The Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or executive officer is found to have a Liability for which they could not be indemnified under rule 11.1;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or executive officer is found guilty;
- (c) in defending or resisting proceedings brought by a regulator or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 11.2(c) does not apply to costs incurred in responding to actions taken by a regulator or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the Director, Secretary or executive officer under the Corporations Act in which the court denies the relief.

11.3 Indemnity for other officers

Subject to the Corporations Act and rule 11.4, the Company may indemnify an employee, who is not a Director, Secretary or executive officer of the Company, to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an officer of the Company, other than:

- (a) a Liability owed to the Company or a related body Corporate of the Company;
- (b) a Liability owed to a person other than the Company that did not arise out of conduct in good faith, or which otherwise under the Corporations Act or Relevant Law the Company is not permitted to indemnify the person for.

11.4 Indemnity for legal costs of other officers

The Company may indemnify an employee other than a Director, Secretary or executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or by virtue of their holding office as, and acting in the capacity of, an officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the officer is found to have a Liability for which they could not be indemnified under rule 11.3;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 11.4(c) does not apply to costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the officer under the Corporations Act in which the court denies the relief.

11.5 Proceedings

For the purposes of Rules 11.2 and 11.4, 'proceedings' includes the outcomes of the proceedings and any appeal in relation to the proceedings.

11.6 Insurance for the benefit of Directors, secretaries and executive officers

Subject to the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

11.7 Insurance for other officers

Subject to the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an employee and also an officer of the Company, acting in that capacity, but who is not a Director, Secretary or executive officer of the Company against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

11.8 When insurance may not be provided by the Company

The Company shall not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer or an employee who is also an officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) conduct for which the Company is otherwise not permitted under the Corporations Act or Relevant Law to insure the person for.

11.9 Definitions for the purposes of rule 11

In this rule 11, except to the extent the context otherwise requires:

‘Liability’ includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense;

‘executive officer’ means a person who is concerned in, or takes part in, the management of the Company (regardless of the person’s designation and whether or not the person is a Director of the Company);

‘officer’ means:

- (a) a Director or Secretary of the Company;
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
 - (ii) who has the capacity to affect significantly the Company’s financial standing; or
 - (iii) in accordance with whose instructions or wishes the Directors are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the Directors or the Company).